IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 615 OF 1998

1. Satpalsingh Dharamsingh
   Chowdhary
2. Smt. Santosh S. Chowdhary ..Appellants

versus

1. Ashok G. Raut
2. New India Assurance Co. Ltd.
3. Harshad Chimanlal Parekh ..Respondents

Mr. T. J. Mendon with C. M. Lokesh for the Appellants.

Mr. D. Mahadik i/b. S.R. Singh for the Respondent No.2.

AND

FIRST APPEAL NO. 159 OF 2000

1. Ramswarup Ramkaran Tak
   alias Singh
2. Smt. Satyawati Ramswarup Tak
   alias Singh ..Appellants

versus

1. Ashok G. Raut
2. New India Assurance Co. Ltd.
3. Harshad Chimanlal Parekh ..Respondents

Mr. P. S. Dani for the Appellants.

Mr. D. Mahadik i/b. S.R. Singh for the

Respondent No.2.

CORAM : D. G. DESHPANDE,J.

DATE : 17TH FEBRUARY, 2005

ORAL JUDGMENT :

1. Both these appeals have been filed by the original claimants. They arise out of a common judgment delivered in MACT, Alibag, in Accident Claim Case No.329 and 382 of 1986. Accident Claim Case No.329 of 1986 was filed by Satpalsingh Dharamsingh Chowdhary and Anr. who are appellants in First Appeal No. 615 of 1998 and Accident Claim Case No. 382 of 1986 was filed by Ramswarup Ramkaran Tak @ Singh and Anr. who are appellants in First Appeal No. 159 of 2000

2. The accident which gave rise to these two Accident Claim Cases before the Accident Claim Tribunal at Alibag, arise in the following manner:

3. Accident took place on 24.8.1986 at 17.20 hours on Bombay Goa Road, Near Village Chichwad, and the vehicles involved there are MMF 7299 and MEH 4641. At that time Vijendra Choudhary and Narendra Singh were travelling in Maruti car No.7299 from Karnala to Bombay through Bombay Goa Road. When this car reached Village Chichwan and was

negotiating ascending curve in a slow speed, a lorry bearing No.MEH 4641 came from the opposite direction in a very rash and negligent manner, in excessive and uncontrollable speed and dashed against Maruti car with force. Due to the dash, Narendra died on the spot and other occupants of the car including Vijendra succumbed to the injuries in Panvel Municipal Hospital. Satpalsingh Dharamsingh Chouwhdary and Santosh Satpalsingh Chowdhary are legal heirs of deceased Vijendra, and Ramaswarup Ramkaran Tak @ Singh and Satyawati are the legal heirs of Narendra, both being the parents of the respective victims. In this background of the matter, the Accident Claim Cases came to be filed.

4. Insurance Company resisted the claim as being exorbitant earnings of the victims i.e. two deceased persons, were also challenged. The parties led evidence and ultimately the Tribunal awarded Rs.54,200/- in Accident Claim Case No. 329 of 1986 to the claimants including the amount of no fault liability and same amount to other claimants in Accident Claim Case No. 382 of 1986 including no fault liability. Being aggrieved by the order / award, these two appeals have been filed.

5. Since there are no cross appeals either by the insurance company or by the owners of the

vehicle, their liability to pay compensation, has to be accepted. The question is of quantum of compensation or amount of compensation, to which the respective claimants in their respective appeals are entitled.

6. so far as deceased Vijendra is concerned, it was argued that at the time of death, he was young boy of 27 years. His earning was Rs.8,000/- permonth.

7. It appears from the judgment of the Tribunal that the Tribunal treated that the accident was the case of contributory negligence. In paragraph 30 of the judgment finding is recorded that both the drivers are equally responsible for causing the accident.

8. So far as claim petition filed by heirs of Vijendra is concerned, the Tribunal noted Vijendra was 27 years of age, he was drawing Rs.8,000/- per month, he was giving Rs.4,000/- to Rs.5,000/- per month to his parents and it is also noted that his father Satpalsingh had incurred Rs.15,000/- for funeral and for coming from Punjab to Bombay. The Tribunal considered the age of the parents for determining the multiplier, in paragraph 32 that on the date of the accident Satpalsigh was of the age

of 60 years and his wife was 55 years of age.

9. Satpalsingh has adduced evidence about the income of his son Vijendra. He examined P.W. 2 Mahesh Maniklal Doctor . He deposed that Vijendra was working with him and was being paid Rs.8,000/- per month. This witness has also produced Income Certificate at Exhibit 31. But the Tribunal rejected evidence of this witness on the ground that it was not suppurated by any pay roll or any other account book. It was held that if he was receiving Rs.8,000/- per month in 1987, then the deceased must be paying income tax but since he was not paying income tax, his income to be held as Rs.15,000/- per annum only. Applying this logic, the Tribunal held that he must be paying Rs.1,000/- per month to the family and he would have continued to make this payment till the time of his marriage, for four years. Later on after his marriage the amount would have been reduced.

10. So far as Narendra is concerned, his case is discussed in paragraph 35. Evidence was led to show that Narendra has started construction business in the name and style as Rajendra Construction Co. He was in construction from May 1986 and was earning Rs.10,000/- per month and he used to give Rs.5,000/- for household expenses. The Tribunal considered the

financial position of the father of Narendra. Since Narendra was not paying income tax, his income was taken as Rs.18,000/- per annum. Out of that the Tribunal held that Narendra would have paid Rs.1,000/- to the family till his marriage and later on this amount would have been reduced. It is on the basis of these conclusions that the Tribunal awarded compensation of Rs.54,200/- because of contributory negligence and multiplier appears to have been applied with reference to the age of the parents in both these cases.

11. Counsel for the appellants therefore contended that firstly there was no reason for the Tribunal to reject the evidence about income as adduced by the respective parents. Secondly, it was contended that merely because income tax returns were not filed, it could not mean that the deceased had income below the level fixed by the Income Tax Authorities under the Income tax Act. He also contended that no inference can be drawn legally in that regard, viz. in the absence of income tax returns, the income must be presumed to be less than or up to the minimum limit exempted under the Income Tax Act. He also contended that ages of the parents of the victims on the date of the accident were different or in any case that aspect of the matter and their longevity or life acceptance of their

life, was not at all considered. He further contended that the court made calculation only for a period of four years till the marriage of the victim but did not consider the subsequent period. According to him after marriage the contribution of the victim towards family i.e. parents may be reduced but it will not come to a zero in any case. He further contended that nothing was granted to the claimants - appellants in both the appeals of the loss of their young children, towards mental shock and loss of love, care and consortium. He therefore contended that the compensation awarded by the Tribunal is liable to be substantially increased.

12. Counsel for the respondent relied upon the Judgment of this Court reported in **2002 ACJ 85 Sitaram Prabhu Tele and antoher vs.Rajabai Vilas Patil and Ors.** It was a case of a death where ST bus and the truck was involved. The deceased was travelling in truck as bonafide passenger. There was a collusion between the bus and truck resulting in the death. Tribunal awarded Rs.1,20,000/- holding S.T. and the truck are equally liable for the accident. The question before the court was whether in the case of composite negligence, it is open to apportionate the Award. After discussing all the relevant judgements in this field, Justice Lodha came to the conclusion" **..that in a case of**

composite negligence to avoid the multiplicity of proceedings, the Tribunal is competent to apportion the compensation in the proportion of their respective negligence. I therefore, have no doubt in holding that in a case of composite negligence when the drivers of the two vehicles are responsible for the cause of accident, the Tribunal is competent to apportion the liability in the proportion of the respective negligence of the drivers."

13. In this case the Tribunal has come to the conclusion as has been observed by me, earlier, that this is a case of contributory negligence. Therefore drivers of both the vehicles will have to be held liable. For fixing the percentage of their liability, oral evidence adduced by the parties will have to be considered.

14. In First Appeal No.159 of 2000 filed by Ramswarup, the first witness examined on behalf of the claimants was Raswarup Singh (Appellant No.1 himself), he had no personal knowledge about the accident. Second witness was Ravindra Shringarpure, he is an bank employee, he has no knowledge about the accident. Third witness is Bangalore Manohar, Manager of Andhra Bank about income of the deceased, but he has no personal knowledge about the accident. Fourth witness is Naresh Varkad, Senior Assistant in

Bharat Forge Ltd., having no personal knowledge about the accident. Fifth witness is Ramesh Phadke, working in Punjab National Bank, Chembur, he has no personal knowledge about the accident. Sixth witness is Om Prakash Kabra, who was working in Air Freight Ltd., he has no personal knowledge about the accident.

15. In First Appeal No. 615 of 1998 filed by Satpalsingh, first witness examined was Satpalsing Chaudhari (Appellant No.1 himself). He has no personal knowledge but he produced certified copy of panchnama of the accident, cause of death certificate, inquest panchnama and other documents. The other witness is Mahesh Doctor with whom the deceased was employed but he has also no personal knowledge.

16. Therefore, it will be clear that so far as the parents are concerned they had no personal knowledge of the accident but it is equally true that nobody was examined on behalf of the owner of the truck to prove the manner in which the accident occurred. The Tribunal however, took into consideration the panchnama and following facts were noted from the panchnama by the court :

. Dash was in the centre of the road and Mori

No. 6/6 at a distance of 18 meters to north. From that point of dash car bearing No, MMF 7299 was found at the distance of 5 meters completely damaged facing towards the eastern side. From Mori its West truck No.MEH 4641 was found trutled, on cleaner side at that place road was having curve and width of the road was 5 meters at the eastern side of the road there was strip of 5 width, and width of the road was about 23', from the truck upto the car pieces of glass were found on the road, portion of the body of the car was found damaged and lying scattered, back door of the car was found behind the truck at a distance of 3 meters. Front door of the car was found but it is not clear from where it was found, siddy marks of the truck were found at the distance of 5 meters, complete front portion of maruti car was found damaged, whereas the screen glass of the truck is turned turtled was found broken. No other damage was found on the body of the truck.

17. From the aforesaid factual position as noted in the panchnama, it is clear that the truck gave a very powerful dash to the car. Finding of the back door of the car behind the truck at a distance of 3 meters would show that it was at this point that car was hit by the truck and then it went ahead. The Tribunal has held in the circumstances that both the drivers were equally liable for causing accident.

But, in my opinion, looking to the damage to the car the liability of the car driver appears to be 40% and that of the truck driver 60%. Such apportionment of liability can be made both by the Tribunal and by this court.

18. Counsel for the respondents also placed relied on the Judgment of the Delhi High Court reported in **1993 ACJ 907 Krishan Lal and others vs. Mohd. Din and others,** wherein it is held that finding of the Tribunal that the driver of the truck was 70% negligent and driver of the car was 30% negligent and this finding was upheld in the Appeal. Other cases on the same point therefore require no discussion.

19. However, counsel for the appellants contended that even if it is a case of joint and several liability of two joint tortfeasers, claimants can recover entire compensation from one of them. The claimants Advocate relied upon the judgment of Karnataka High Court reported in **2004 ACJ 249 Karnataka State Road Transport Corporation vs. Arun**, wherein Karnatka High Court held on the basis of the judgment of the Supreme Court reported in 1998 ACJ 342 Union of India vs. United India Insurance Co. Ltd.

> **"..that where the accident has occurred due to negligence of the drivers of two vehicles and not due to negligence of the claimant, one of the joint tortfeasors cannot plead contributory negligence on the part of the the passengers of the vehicle and qua the passengers of the bus who were innocent. It is also held that the Motor Accidents Claims Tribunal is clearly an alternative forum in substitution of civil court for adjudicating upon claims for compensation arising out of the use of the motor vehicles. It is well settled that the liability of joint tortfeasors is joint and several and each is responsible, jointly with each and all of the others and also severally for the whole of the amount of damage caused by the tort, irrespective of the extent of his participation. The injured may sue any one of them separately for the full amount of loss or he may sue all of them jointly in the same action and even in the latter case, the judgment so obtained against all of them may be executed in full against any one of them."**

20. As against this, counsel for the respondents relied upon the judgment of the Delhi High Court

(1993 ACJ 907) referred to above, wherein Delhi High Court in paragraph 11 held :

> **"But in the absence of the other joint tortfeasor i.e., the owner of the car and its insurance company, it cannot be said that the occupants of the car would become entitled to recover the full compensation from the respondents who are before the court. They may not have contributed to this accident or acted negligently, but since they did not implead the owner of the car and its insurance company, therefore, they have to forgo 30 per cent of their share of compensation from the tortfeasors who are before the court."**

21. Admittedly judgment of the Supreme Court has to be accepted in preference to the judgment of the Delhi High Court and therefore even if the owner or driver of the car were not joined in the case once the court comes to the conclusion that it is a case of joint and several liability then whatever compensation is awarded, the claimants will be entitled to recover from the party who is joined i.e. respondents.

22. The next question was about the liability of

the insurance company. It was the contention of the insurance company that since the policy was for a limited liability, the insurance company was not liable to pay the entire claim but their claim should be restricted to the amount mentioned in the policy i.e. limited liability. In this regard, counsel for the appellants contended that in order to prove this particular objection or contention insurance company did not adduce any evidence at all. They did not produce either original policy or its copy and did not therefore prove the terms and conditions of the policy. According to him there is absolutely no material to hold that liability of the insurance company was limited and therefore in the absence of the sase, he contended that insurance company cannot claim that they were liable to the extent of their limit.

23. I have gone through the record of both the cases and I do not find that the insurance company had examined anybody on their behalf nor was it found that any document about the insurance was filed by the insurance company. Neither policy of the insurance nor its copy nor anything about payment of premium. Though the insurance company was represented by Counsel, he also did not point out anything in that regard, therefore, in the absence of any such documentary evidence, mere

contention of the insurance company about its limited liability cannot be accepted, and it has to be rejected.

24. In this regard counsel for the appellants relied upon the judgment of Delhi High Court reported in **1991 ACJ 1991 New India Assurance Co. Ltd. vs/ Savitri Devi and others** where the insurance company did not file the written statement and their defence was struck down and neither original nor copy of the policy nor any other evidence was produced by the insurance company to show that the liability is limited to Rs.5,000/- as per statute. The question was whether insurance company was liable to pay entire amount and the answer was given by the Delhi High Court in the affirmative. This is found in paragraph 12 of the said judgment. This submission of the appellants about full liability of the insurance company, is required to be accepted.

25. So far as multiplier applicable to the Accident Claim Cases filed by the parents of the victims, counsel for the appellants relied upon the Judgment of the Delhi High Court reported in **2003 ACJ 2152 Gyanchand Jain and Anr. vs. Parmanand and others** where son of the appellant met with an accident on 19.5.1987, his age was 26 years. The

age of the father and mother respectively was 55 and 48 years. Multiplier of 12 was adopted. Both the claimants and the insurance company filed appeal before the High Court, Appeal of Insurance company was dismissed and Appeal of the claimants was, partly allowed. S.L.P. came to be filed by the claimants for applying the multiplier of 18. That contention was not accepted by the High Court. Counsel for the appellants therefore contended that when the age of the parents was 55 and 48 years respectively, multiplier of 12 should be adopted.

26. Now coming to the facts of the case and the claim made by respective claimants, it is to be seen that so far as Accident Claim Case of Satpalsingh is concerned, (First Appeal No. 615 of 1998) they had lost their son Vijendra 27 years of age. According to Satpalsingh, Vijendra was drawing Rs.8,000/- per month. He examined P.W. 2 Mahesh Maniklal Doctor who state that Vijendra was working with him and he was being paid Rs.8,000/- per month. He also proved income certificate at Exhibit 311. Satpalsingh also stated that deceased was giving Rs.4,000/- to Rs.5,000/- per month for household expenses.

27. In this regard the Tribunal disrcarded evidence of P.W. 2 Mahesh Doctor and also income

certificate Exhibit 31 on the ground that it was not supported by any pay roll or any other kind of account book. Tribunal held since no income tax returns are found, the income must be held to be Rs.15,000/- per annum and out of which Vijendra might be paying Rs.1,000/- per month to the family. Then on that basis compensation was granted for four years i.e. upto the time of the marriage of Vijendra. This reasoning is without any legal basis when Satpalsingh has examined P.W. 2 Mahesh Doctor who produced and proved income certificate Exhibit 31, then it stands proved that Vijendra was earning Rs.8,000/- per month. Non submission of income tax returns would not necessarily mean that the income of Vijendra was Rs.15,000/- per annum and calculation of Rs.1,000/- per month for four years, was also not proper. Delhi High Court, as stated above, has applied multiplier of 12 where age of the parents was 55 and 48. Satpalsingh in the claim petition has given his age as 60 and 55, therefore multiplier of 8, would be proper. Income of the deceased has to be taken at Rs.8,000/- per month. According to Satpalsingh deceased was giving Rs.4,000/- to Rs.5,000/- per month for the household expenses, his age at the time of accident was 27 years. Therefore, Rs.4,500/- could be taken as contribution of Vijendra to the family for one year, it comes to Rs.54,000/- for four years up to the

marriage it comes to Rs.2,16,000/- and thereafter even if it is taken to be Rs.2,500/- per month it would come to Rs.30,000/- per year, therefore for four years it comes to Rs.1,20,000, total comes to Rs.3,36,000/-. Since nothing is paid for loss of consortium Rs.20,000/-, would be proper. As regards the expenses incurred the Tribunal has found that Rs.3,100/- was expenses incurred. Therefore, the total would come to Rs.3,36,000/- + Rs.20,000/- + Rs.3,100/- =Rs.3,59,100/-. Satplasingh in his evidence has admitted that he is retired from service as a Special Mail Guard and he was getting pension of Rs.2,000/- per month, he had received Rs.96,000/- by way of provident fund. His another son Arvind was drawing Rs.3,000/- to Rs.4,000/- per month from private service and considering this aspects, total compensation can be awarded to the appellants is Rs.3,20,000/- + Rs.20,000/= + Rs.3,100/- = Rs.3,43,100/-.

28. So far as Ramswarup R. Tak & Anr. - claimants in First Appeal No.159 of 2000 is concerned, their son Narendra was 28 years old. He had started proprietory concern under the name and style of Narendra Enterprises. He was also doing construction business under name and style of Rajendra Construction, he was earning Rs.10,000/- per month and he was giving Rs.5,000/- for household

expenses.

29. Here also the Tribunal took into account income as Rs.18,000/- per annum because there were no income tax retunrs. But from the evidence adduced it has to be safely inferred that deceased Narendra was earning Rs.10,000/- per month as minimum income from different business and he was giving Rs.5,000/- to family per month for household expenses.

30. Ramswarup (Appellant No.1) has stated that he retired as Financial Adviser in Air Frat Limited his salary at that time was Rs.10,000/- per month i.e. at the time of retirement. He gets Rs.80,000/- per year by way of interest and he has invested Rs.5,50,000/- in F.D.R. but even after retirement he is earning Rs.5,000/- per month.

31. Ramswarup (Appellant No.1) was 63 years of age and his wife was 58 years of age at the time of death of Narendra. Here also multiplier of 8 has to be applied. If Narendra would get married after 3-4 years, his contribution to the family would have been reduced, therefore following calculation has to be made:

Rs.5,000/- per month x 12 = Rs.60,000/- x 4

=Rs.2,40,000/-.

Then Rs.2,500/- per month after marriage x 12 = Rs.30,000/- x 4 = Rs.1,20,000/-.

Rs.2,40,000/- + Rs.1,20,000/- = Rs.3,60,000/-

Considering the financial status and position of Ramswarup the amount has to be given at Rs.3,40,000/- + Rs.20,000/- has to be paid for the loss of consortium, so total compensation to which the appellants - claimants are entitled in FA No. 159 of 2000, is Rs.3,60,000/-.

32. In the result, I pass the following order:

ORDER

. **Order in First Appeal No. 615 of 1998**

First Appeal is partly allowed. Impugned order passed in Accident Claim Case No. 329 of 1986, is modified. Compensation awarded is enhanced. In all, the respondents to pay to the appellants - Satpalsingh & Anr., a sum of Rs.3,43,100/-. The Appellants will be entitled to interest at the rate of 9% on the enhanced amount from the date of application till payment.

Order in First Appeal No. 159 of 2000 :

First Appeal is partly allowed. Impugned order passed in Accident Claim Case No. 382 of 1986, is modified. Compensation awarded is enhanced. In all, respondents to give to the appellants Ramswarup & Anr. sum of Rs.3,60,000/-. The appellants will be entitled to interest at the rate of 9% on the enhanced amount from the date of application, till payment.

17.2.2005 (D.G. DESHPANDE, J.)